



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

SMC

Docket No: 06607-99

12 January 2000

MSGT [REDACTED] USMC

Dear Master Sergeant [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 12 January 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the report of the Headquarters Marine Corps Performance Evaluation Review Board (PERB), dated 21 October 1999, a copy of which is attached.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the report of the PERB. The Board noted that ALMAR 63/94, dated 1 March 1994, was in effect when the contested fitness report was submitted. Paragraph 3.B stated "Failed initial attempts at qual/requal [qualification/requalification] will not be reported into...the fitrpt [fitness report] unless the commander determines that the failure was the result of a lack of effort or negligence on the part of the Marine." However, paragraph 3.D, concerning "Marines who fail to qualify despite all efforts on the part of the commander," stated "block 5a of the fitrpt will record 'U' for unqualified and the report will be adverse." The Board found no violation of ALMAR 63/94 in the contested fitness report. In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is

important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosure



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

IN REPLY REFER TO:
1610

MMER/PERB

OCT 21 1999

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF
MASTER SERGEAN [REDACTED] USMC

Ref: (a) MSgt [REDACTED] DD Form 149 of 16 Jul 99
(b) MCO P1610.7C w/Ch 1-6

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 13 October 1999 to consider Master Sergeant [REDACTED] petition contained in reference (a). Removal of the fitness report for the period 940516 to 941130 (GC) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends that the report is in error and unjust and bases her argument on the provisions of subparagraph 4003.8a(6) of MCO P1610.7E. This provision indicates that if a Marine tries his/her best when attempting to qualify/requalify with the service rifle or service pistol, and still goes "unqualified", then an adverse mark is not warranted.

3. In its proceedings, the PERB concluded that the report is both administratively correct and procedurally complete as written and filed. The following is offered as relevant:

a. Simply stated, the petitioner has tried to apply today's rules to a report that was written under a different directive. MCO P1610.7E did not become effective until 1 January 1999, more than four years subsequent to the ending date of the challenged fitness report. Hence, it has absolutely no bearing on the petitioner's argument.

b. Subparagraph 5001.2a of reference (b) defined adverse as: "An entry indicating failure of scheduled PFT or unqualified marksmanship." As a result of the "U" entry in Item 5a of the challenged fitness report, the petitioner was correctly required to acknowledge the report as adverse and offered an opportunity to append a statement of rebuttal. For whatever reason she chose not to avail herself of that right, her declination to do so is viewed as passive concurrence in the report's accuracy.

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4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness report should remain a part of Master Sergeant [REDACTED] official military record.

5. The case is forwarded for final action. .

[REDACTED]
[REDACTED]
Chairperson, Performance
Evaluation Review Board
Personnel Management Division
Manpower and Reserve Affairs
Department
By direction of the Commandant
of the Marine Corps